

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CARL W. CUNNINGHAM

Petitioner,

v.

ALICE PAYNE,

Respondent.

Case No. C05-5293FDB

REPORT AND
RECOMMENDATION

**NOTED FOR:
AUGUST 12TH, 2005**

This Habeas Corpus Action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636 (b)(1)(B) and Local Magistrates' Rules MJR 3 and MJR 4. Petitioner has filed a motion to dismiss the petition **WITHOUT PREJUDICE**. (Dkt. # 13). Respondent does not oppose the motion. (Dkt. # 14). Accordingly, this petition should be **DISMISSED WITHOUT PREJUDICE**. A proposed order accompanies this report and recommendation.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **August 12th, 2005**, as noted in the caption.

Dated this 15th day of July, 2005.



Karen L. Strombom
United States Magistrate Judge